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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE, Plaintiff and Respondent, v. JOSHUA KENNETH BRINGAZI, Defendant and Appellant.	A156159 (San Mateo County Super. Ct. No. 18SF012958)

Appellant Joshua Bringazi appeals from an order revoking his parole. His appointed counsel filed a brief asking this court to conduct an independent review of the record under *People v. Wende* (1979) 25 Cal.3d 436 (*Wende*). Counsel also advised Bringazi of his right to file a supplemental brief, but no such brief was filed. We now affirm.

I. BACKGROUND

A. Bringazi's Sentence and Conditions of His Parole

Appellant Bringazi is a high-risk sex offender parolee. Following his conviction in 2014 for committing a lewd act upon a 15-year old girl, in violation of Penal Code section 288, subdivision (c)(1) and statutory rape in violation of Penal Code section 261.5, subdivision (d)),[1] he was sentenced to 9 years in state prison. Bringazi's parole conditions form indicates he was released on or about November 20, 2017.

[1] We affirmed the judgment of conviction in an unpublished opinion filed October 31, 2016. (*People v. Bringazi* (Oct. 31, 2016, A141541) [nonpub. opn.].)

On November 6, 2018, Jason Beatty, Bringazi's parole agent, filed a parole revocation petition. The petition alleged Bringazi violated the following parole conditions:

Condition No. 18, which states: You shall not enter or loiter within 250 feet of the perimeter of places where children congregate; e.g., day care centers, schools, parks, playgrounds, video arcades, swimming pools, state fairgrounds, county fairgrounds, etc."

Condition No. 19, which states: "You shall not enter any school building or school grounds (kindergarten and grades 1 to 12, inclusive) unless for lawful business and written permission, indicating the dates and time, has been granted from the chief administrative official of the school."

Condition No. 84, which states: "You shall not use or access social media sites, social networking sites, peer to peer networks, or computer or cellular instant messaging systems; e.g., Facebook, Instagram, Twitter, Snapchat, Lync, Gmail, Yahoo, KIK Messenger, Tumblr, etc. This would include any site which allows the user to have the ability to navigate the internet undetected."

On December 19, 2018, a hearing on Bringazi's request for substitution of appointed counsel under *People v. Marsden* (1970) 2 Cal.3d 118 was held. The motion was denied. On December 28, 2018, a parole revocation hearing was held. Bringazi was found to have violated conditions No. 18 and No. 19. He was ordered to serve 180 days in jail with 120 days of credit.

On January 3, 2019, Bringazi filed a timely notice of appeal.

B. Evidence Presented at Revocation Hearing

As a paroled high risk sex offender, Bringazi was required, among other things, to wear a global positioning system (GPS) device. (See Pen. Code, § 3010.10, subd. (a).) At the parole revocation hearing, Bringazi's trial counsel stipulated that Bringazi had

been advised of all of his parole conditions, including the requirement that he wear a GPS device. [2]

The trial court directed the prosecutor to present evidence only on the alleged violations of condition Nos. 18 and 19. The court indicated it would resolve whether Bringazi violated those conditions and it would "then if necessary" address the social media prohibition in condition No. 84.

Beatty testified that he had been a parole officer for 18 years. Beatty went over the special conditions with Bringazi "on multiple occasions."

Beatty relies on the GPS device that high-risk sex offender parolees must wear to monitor their compliance with the parole conditions. Every day, Beatty reviews the GPS movements of each parolee he supervises for the prior 24-hour period. The GPS tracks are marked on a map, which Beatty described as an aerial photo. During cross-examination, Beatty identified the aerial photos of Bringazi's GPS tracks that he used to determine that Bringazi was in prohibited areas. The photos, marked Defense Exhibits A & B, were admitted into evidence.

According to the GPS tracking system, Bringazi was in areas on Sunday, October 21, 2018, indicating a violation of parole condition Nos. 18 and 19.

From 8:02 a.m. to 8:07 a.m. on that date, Bringazi was in the parking lot of Campbell Christian School, an elementary and junior high school. Bringazi returned to the school grounds at 8:22 a.m. and entered a building, where he remained until 10:07 a.m. Between 10:09 a.m. and 10:17 a.m., Bringazi was on the sidewalk in front of the Action Day Primary Plus School, which is located next to the Campbell Christian School. At that location is a bus stop and a sign identifying the site as an "Elementary through Middle School."

Beatty thought the building Bringazi entered was a gymnasium, but Bringazi told him it was a church. To Beatty's knowledge, Bringazi had not previously entered that

[2] Upon his release from prison, Bringazi refused to sign the written copy of the special parole conditions imposed on him.

building while on the GPS monitoring system. Beatty did not visit the site and had no personal knowledge about the building and its use.

Beatty relied on the online research he conducted through the Internet, including viewing the website of the Campbell Christian School, and what he called "the varied [GPS] tracks photo printouts" to determine the violations. He based his testimony about the presence of signs identifying the schools, a baseball field and playground structures for children next to the Action Day Primary Plus School on his online research and the GPS track maps.

In his testimony, Bringazi admitted that he was at the Church of Christ on the morning of October 21, but he said that he went to the church there on Sunday mornings. He normally drove, but he took the bus on October 21. He was waiting for and got on a bus at the bus stop during the time that Beatty alleged he was loitering in front of the Action Day school.

Bringazi claimed not to have seen any signs for either school or other physical evidence that would have informed him that he was in a prohibited area. He acknowledged the picture that Beatty relied on showed the Action Day sign by the bus stop, but denied ever seeing it. Bringazi asserted that he had been to that church "hundreds of times" including on prior occasions while wearing the GPS ankle monitor.

Although trial counsel pointed out that Beatty conducted no personal investigation of the site, he stated that he was not contesting the reliability of the GPS evidence that Beatty relied upon to support the allegations. Counsel argued that because Bringazi did not see any signs or children, he was not on notice that he was within 250 feet of a place where children congregate or on school grounds either when he was at the bus stop or walking to church.

C. The Trial Court's Determination That Bringazi Violated Conditions of His Parole

Citing Beatty's testimony about a large sign that identified the facility as Action Day Primary School, the court concluded any reasonable person at the bus stop would have been on notice that he was standing in front of a school. Based on Beatty's

testimony about playground equipment that was visible from the parking lot, and the GPS aerial maps, the court reasoned that Bringazi had notice he was on school grounds and a place where children congregated.

The trial court found beyond a reasonable doubt that Bringazi violated the two parole conditions prohibiting him from being near a site where children congregate and being on school grounds without authorized permission. No evidence was presented or finding made about the alleged violation of the social media condition.

The court reasoned that Bringazi could attend a church that is not attached to a school attended by children. Finding the violations to be serious, it imposed the maximum 180-day jail time penalty.

II. DISCUSSION AND DISPOSITION

Following independent record review pursuant to *Wende*, *supra*, 25 Cal.3d 436, we are satisfied that no reasonably arguable factual or legal issues exist. The order is affirmed.

STREETER, J.

We concur:

POLLAK, P.J.

TUCHER, J.